
5/8/08 - JRJ Enterprises Inc. v. M/V CAP ORTEGAL, et al. - JIMMY MACHUCA

Mel Winter & Associates, Inc.

Page 1 to Page 104

CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY: MEL WINTER & ASSOCIATES, INC.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
J.R.J. ENTERPRISES, INC.,

Plaintiff,

-against- 07 CIV 6457

M/V CAP ORTEGAL, her engines,
boilers, etc., and COMPANIA
SUD AMERICANA DE VAPORES, S.A.,

Defendants.

- - - - - x

DEPOSITION of JIMMY MACHUCA, taken by
Defendant, Compania Sud Americana De Vapores, S.A., at
the offices of Mahoney & Keane, LLP, 76 Beaver Street,
10th Floor, New York, New York, on Thursday, May 8,
2008, commencing at 10:30 a.m., before MEL WINTER, a
Shorthand Reporter and Notary Public within and for
the State of New York.

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3 APPEARANCES:
4

5 PURRINGTON & McCONNELL
6 Attorneys for Plaintiff
7 82 Wall Street, Suite 1110
8 New York, New York 10005
9 BY: JOHN HAY McCONNELL, Esq., of Counsel

10 MAHONEY & KEANE
11 Attorneys for Defendant
12 Compania Sud Americana
13 De Vapores, S.A.
14 76 Beaver Street, 10th Floor
15 New York, New York 10005
16 BY: GARTH S. WOLFSON, Esq., of Counsel
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Page 3

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2 IT IS HEREBY STIPULATED AND
3 AGREED that the filing and sealing of
4 the within deposition be, and the
5 same are hereby waived;

6 IT IS FURTHER STIPULATED AND
7 AGREED that all objections, except as
8 to the form of the question, be and
9 the same are hereby reserved to the
10 time of the trial;

11 IT IS FURTHER STIPULATED AND
12 AGREED that the within deposition may
13 be sworn to before any Notary Public
14 with the same force and effect as if
15 sworn to before a Federal Court Judge
16 of this Court;

17 IT IS FURTHER STIPULATED that
18 the transcript is to be certified by
19 the reporter.
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Page 4

1
2 JIMMY MACHUCA, called as a witness,
3 having been first duly sworn by MEL WINTER,
4 a Notary Public within and for the State of
5 New York, was examined and testified as
6 follows:

7 EXAMINATION BY

8 MR. WOLFSON:

9 Q Good morning, Mr. Machuca.

10 Just a few ground rules. I ask you
11 to verbalize your answers. The court reporter
12 can't take down a shrug of the shoulder or nods,
13 so please answer orally.

14 If you don't understand a question
15 I have asked, please don't hesitate to let me
16 know. I will be happy to rephrase my question and
17 put it in a form that makes it easier for you to
18 understand.

19 If you want to take a break for
20 whatever reason, let us know, and we would be
21 happy to oblige.

22 I would only ask that if I have
23 asked you a question, you answer the question
24 first and then take your break.

25 Finally, I would admonish you not

Page 5

1 Machuca

2 to guess. No one here, not me, not your own
3 attorney, no one is interested in guesswork. If
4 you don't know the answer to a question, you
5 should know that "I don't know" is a perfectly
6 good answer.

7 You understand that?

8 A Okay.

9 Q Can you state your full name for
10 the record?

11 A Jimmy Machuca.

12 Q What is your address?

13 A Home address, 4-15, Kenneth Avenue,
14 Fair Lawn, New Jersey 07410.

15 Q What is your date of birth?

16 A October 15, 1956.

17 Q Are you a US citizen?

18 A Yes, sir.

19 Q What is your social security
20 number?

21 A 033-46-9118.

22 Q Are you currently employed?

23 A Yes, sir.

24 Q By whom are you employed?

25 A J.R.J. Enterprises, Inc.

Page 6

1 Machuca
 2 Q What is the address of J.R.J.
 3 Enterprises?
 4 A 4-15 Kenneth Avenue, Fair Lawn, New
 5 Jersey, 07410.
 6 Q What is the business of J.R.J.
 7 Enterprises?
 8 A Importers of plantanos.
 9 Q One more thing, English -- are you
 10 more comfortable testifying today in English than
 11 any other language?
 12 A The doesn't matter, English is all
 13 right.
 14 Q I would ask -- I understand you
 15 said plantanos, we understood what you meant.
 16 For the record, if you give your
 17 answer in English, that makes it an easier record,
 18 okay?
 19 A Okay.
 20 Q Do you have a job title at J.R.J.?
 21 A Yes.
 22 Q What is your title?
 23 A President.
 24 Q Does J.R.J. have any other offices
 25 besides the 15 Kenneth Avenue address?

Page 8

1 Machuca
 2 silent?
 3 A Secretarial work.
 4 Q So what are your duties as
 5 president of J.R.J.?
 6 A My duties as president, taking care
 7 of business, making sure all the cargo that comes
 8 in is sell to the proper client and making sure
 9 that the product is on good condition, saleable
 10 condition.
 11 Q Since J.R.J. was founded around
 12 1997, have your duties always been the same?
 13 A Yes.
 14 Q Before working for J.R.J., where
 15 were you employed?
 16 A Before J.R.J., I was with Mermanos
 17 Machuca, Inc.
 18 Q What was the business of Mermanos
 19 Machuca?
 20 A Import of plantains.
 21 Q Same business?
 22 A Same business.
 23 Q What were -- were your duties
 24 essentially the same as J.R.J. Enterprises?
 25 A Yes, sir.

Page 7

1 Machuca
 2 A No.
 3 Q Are there any other employees
 4 besides yourself at J.R.J.?
 5 A No.
 6 Q Is J.R.J. a corporation?
 7 A Yes.
 8 Q Where was it incorporated?
 9 A In New Jersey.
 10 Q Do you remember approximately when
 11 it was incorporated?
 12 A Do not remember.
 13 Q When I said I don't want
 14 guessworks, you can estimate if you feel
 15 comfortable --
 16 A 1997, probably.
 17 Q And who are the shareholders of
 18 J.R.J.?
 19 A Jimmy Machuca. And Lirye,
 20 L-I-R-Y-I-E, Machuca.
 21 Q Is Lirye Machuca a relation of
 22 yours?
 23 A My wife.
 24 Q Does she have any role in the
 25 operational aspect of the business, or is she just

Page 9

1 Machuca
 2 Q Did you have any ownership interest
 3 in Mermanos Machuca?
 4 A Yes.
 5 Q Is there a reason -- strike that.
 6 Mermanos Machuca still in business?
 7 A No.
 8 Q Is there a reason Mermanos Machuca
 9 ceased doing business?
 10 A My mother passed away and it was a
 11 company that she built.
 12 Q Was there any dissolution order for
 13 Mermanos Machuca or how did it wind up its
 14 business?
 15 A It was closed. All the kids, four
 16 kids, either way.
 17 Q And how long did you work at
 18 Mermanos Machuca?
 19 A About 10 years.
 20 Q Before Mermanos Machuca, where were
 21 you employed?
 22 A College.
 23 Q So just to be clear, your
 24 experience as an importer of plantains is based on
 25 your years at Mermanos Machuca and J.R.J. and

Page 10

1 Machuca
2 nothing prior to that?
3 A Yes.
4 Q What's the highest level of
5 education you achieved?
6 A Two years of college.
7 Q What college was that?
8 A Bergen Community College, Paramus,
9 New Jersey.
10 Q Did you have a particular
11 concentration or course of study at Bergen that
12 you specialized in?
13 A Business.
14 Q Since leaving Bergen, have you had
15 any special training or course work after college?
16 A No.
17 Q Did you obtain any certificates or
18 licenses of any sort leading to your business?
19 A No.
20 Q Did you ever apply for any special
21 licenses relating to your business?
22 A Yes.
23 Q Was J.R.J. a member of any trade
24 associations or unions or anything like that?
25 A No.

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1 Machuca
2 Q Did you ever take any -- obtain any
3 expertise in surveying cargo or becoming an expert
4 in the carriage of goods?
5 A No.
6 MR. WOLFSON: I would like to do,
7 for ease of reference if it's okay with
8 your counsel, is just mark Plaintiff's
9 Rule 26 document production dated January
10 23, 2008 collectively as Machuca 1, and
11 it's Bates stamped so we can refer to the
12 Bates stamp numbers.
13 (Plaintiff's Rule 26 document
14 production, January 23, 2008 was marked
15 as Machuca Exhibit No. 1 for
16 identification, as of this date.)
17 Q First I would like to refer your
18 attention to Bates stamp 51 of Machuca --
19 MR. WOLFSON: Mark it as Machuca 1.
20 Q Can you identify the document Bates
21 stamped 51 of Machuca 1?
22 A It's a bill of lading,
23 nonnegotiable copy.
24 Q Is that the copy of the bill of
25 lading for the cargo which is at issue in this

Page 12

1 Machuca
2 lawsuit?
3 A Yes.
4 Q And the bill of lading, the
5 original bill of lading would have terms on the
6 back, correct?
7 A Yes.
8 Q And you're aware that CSAV bills of
9 lading always have those terms on the back?
10 A Yes.
11 Q Have you -- prior to this shipment
12 have you booked cargo at CSAV before?
13 A Yes.
14 Q Approximately how many container
15 loads or whatever -- or bills of lading, whatever
16 you feel comfortable estimating, how many have you
17 billed with CSAV prior to this shipment?
18 MR. McCONNELL: 1,000, 2,000.
19 A Maybe 800 to 1,000.
20 Q 800 to 1,000 cargo, container
21 loads?
22 A Yes.
23 Q And in that time would you go about
24 booking the cargo in more or less the same fashion
25 or did it change?

Page 13

1 Machuca
2 A Booking the cargo in the same
3 fashion, what do you mean by that?
4 Q Let me go back.
5 About how many years prior to this
6 shipment had you been using CSAV to carry your
7 cargo?
8 A About 10 years.
9 MR. McCONNELL: Off the record.
10 (Discussion off the record)
11 Q Now in those 10 years, and in these
12 800 to 1,000 container loads, did J.R.J. have a
13 service contract or some other form of agreement
14 with CSAV besides individual bill of lading?
15 A Yes.
16 Q You had service contracts
17 throughout those 10 years?
18 A Yes.
19 Q Was there a service contract in
20 effect at the time the bill of lading, Bates
21 stamped 51 of Machuca 1 was issued?
22 A Yes.
23 Q Is that referenced at the top of
24 the bill of lading somewhere?
25 A Yes.

4 (Pages 10 to 13)

1 Machuca
 2 MR. McCONNELL: Down here.
 3 Q In the particulars first by shipper
 4 section it says, SC, does that stand for service
 5 contract?
 6 A Correct.
 7 Q And it has a number for the service
 8 contract?
 9 A Yes.
 10 Q Do you have a copy of that service
 11 contract with you?
 12 A Not with me.
 13 MR. McCONNELL: I don't.
 14 A But I know I have it.
 15 MR. WOLFSON: I think I requested
 16 this before, I'll request it again, that
 17 way we can be provided with a copy of the
 18 service contract.
 19 You don't have it?
 20 Off the record.
 21 (Discussion off the record)
 22 Q So referring back to Bates stamp 51
 23 of Machuca 1, J.R.J. is identified as the
 24 consignee, correct?
 25 A Yes.

1 Machuca
 2 Q And the shipper is identified as
 3 C.I. Ramsey, Colombia?
 4 A Yes.
 5 Q And as far as the plantains, which
 6 are referenced in the bill of lading, J.R.J. was
 7 the buyer of those plantains from C.I. Ramsey or
 8 somebody else?
 9 A It was the buyer from C.I. Ramsey.
 10 Q Was there a sales contract?
 11 A No.
 12 Q But there was -- was there an
 13 invoice?
 14 A Yes.
 15 Q Do you see the invoice among the
 16 documents that's been marked, that have been
 17 marked collectively as Machuca 1?
 18 A Number is 000055.
 19 Q And so to be clear, the invoice for
 20 the plantains was for U.S. dollars \$9,154.16?
 21 A Yes.
 22 Q And did J.R.J. pay for those
 23 plantains?
 24 A Yes.
 25 Q There is a document among these

1 Machuca
 2 showing proof of payment?
 3 A Has to be some wire transfer in
 4 which -- I don't see them here. I will have to
 5 contact the bank and get the wire transfer.
 6 MR. WOLFSON: Again, I would just
 7 ask that we provide -- be provided with
 8 whatever proofs of payment J.R.J. may
 9 have for the plantains at issue.
 10 Q When these plantains entered the
 11 U.S., was there a Custom's declaration that was
 12 prepared?
 13 A Yes.
 14 Q That Custom's declaration would
 15 also indicate the value of the cargo upon entry
 16 into the U.S.?
 17 A Yes.
 18 MR. McCONNELL: What value? A
 19 value.
 20 MR. WOLFSON: Well, I am going to
 21 ask for a copy of that Custom's
 22 declaration. I don't see it amongst
 23 these.
 24 MR. McCONNELL: Isn't it in here?
 25 MR. WOLFSON: If it is, that's

1 Machuca
 2 great.
 3 A Here.
 4 Q It's Bates stamped 58?
 5 A Is it?
 6 Q No. I think this is it.
 7 MR. McCONNELL: 74.
 8 The invoice hadn't come yet, so
 9 it's in a pro forma until the actual
 10 arrives, because the Customs needs an
 11 invoice.
 12 MR. WOLFSON: I am asking for the
 13 Custom's form. I do see --
 14 Off the record.
 15 (Discussion off the record)
 16 MR. WOLFSON: I'm going to put a
 17 request on the record for the Custom's
 18 entry form for the cargo.
 19 Q Now for this shipment did you
 20 contact C.I. Ramsey about the plantains before the
 21 bill of lading was issued?
 22 What was the first step you took in
 23 this transaction?
 24 MR. McCONNELL: Look, wait. There
 25 are some documents that were in the file

Page 18

1 Machuca
2 that I had to get translated that I
3 haven't given you. I don't think it
4 sheds any light on it, and it doesn't
5 cover what you just asked him. And you
6 don't have copies of these yet.
7 Why don't I do this --
8 MR. WOLFSON: Mark it, whatever it
9 is.
10 MR. McCONNELL: Don't take the
11 clips off these.
12 Q What was your first step in the
13 transaction?
14 Did you contact C.I. Ramsey?
15 How did you go about making this
16 order? Lead us through what happened.
17 A Making the order for those
18 container?
19 Q Yes.
20 MR. McCONNELL: Don't look at this
21 stuff, listen to him.
22 A I have Ramsey called CSAV down in
23 Cartagena and book a container.
24 Q Before he did that, did you contact
25 Ramsey or did Ramsey contact you about the

Page 20

1 Machuca
2 A Ramsey is a company that it was
3 opened by one of my friends down in Colombia as we
4 also have Ramsey in Ecuador.
5 Q Was there a reason why you wanted
6 to start getting plantains from Columbia instead
7 of Ecuador?
8 A I wasn't switching from Ecuador to
9 Columbia.
10 As a matter of fact is that
11 Columbia and Ecuador are two different markets in
12 plantains.
13 Q So it was just business driven for
14 price and the way the market was at the time?
15 A And what my clients were asking
16 for, green plantains out of Columbia.
17 Q Is there any difference in quality
18 -- were you expecting any differences in quality
19 with respect to Colombian plantains as opposed to
20 Ecuadorian plantains?
21 A Like I told you, it's two different
22 market. Colombian plantains and Ecuadorian
23 plantains.
24 Q Is there something about the
25 plantain itself that is different or just the

Page 19

1 Machuca
2 purchase and sale of the plantains?
3 A Did I contact Ramsey?
4 Q Did you have -- what was your
5 arrangement with Ramsey?
6 Did you have you -- were you
7 expecting this cargo? Did you have to order it,
8 or was there a regular shipment you were expecting
9 from Ramsey?
10 A Well, I will be trying to get the
11 Colombian plantain market as I ship plantains from
12 Ecuador. So we have been planning this importing
13 of plantains with Columbia for a while already.
14 Q Was this the first shipment you had
15 from C.I. Ramsey, or had there been prior
16 shipments?
17 A There were prior shipment.
18 Q About how many prior shipments from
19 Ramsey?
20 A About two or three.
21 Q When were those prior two or three
22 shipments relative to the shipment in question?
23 A Within a month.
24 Q And how did you first hear about
25 Ramsey or come in contact with Ramsey?

Page 21

1 Machuca
2 price?
3 A Price. Could be the price, yes.
4 MR. McCONNELL: And quality?
5 A Quality, Colombia is supposed to be
6 superior, as they say, than Ecuador.
7 Q You heard that Colombian plantains
8 might be have better quality?
9 A Correct.
10 Q Did you read that somewhere?
11 A Well, I am in the market every day
12 and the market request Colombian plantains.
13 Q Did you hear anything else about
14 the nature of Colombian plantains aside from the
15 fact they may be a better quality?
16 A Colombian plantains supposedly when
17 you gas ripen them, they'll ripe nice and yellow,
18 only if you gas ripen them.
19 Q Anything else about shelf life or
20 anything else to do with the quality of the
21 plantain that you heard about Colombia plantains
22 as opposed to Ecuadorian-grown plantains?
23 A No.
24 Q So who made the first -- did you
25 call somebody at Ramsey or how did you go about

Page 22

1 Machuca
 2 establishing your relationship with Ramsey with
 3 respect to the Colombian plantains?
 4 A I have been shipping yams out of
 5 Columbia, and then we decided to start bringing
 6 plantains. So I have been looking at Colombian
 7 plantain market for a while already.
 8 Q Was there somebody at Ramsey who
 9 you contacted --
 10 A Yes.
 11 Q -- in order to get the plantain
 12 shipment going?
 13 A Yes.
 14 Q Who is that person?
 15 A The name is right here. Mr.,
 16 C-A-C-E-R-E-S, Louis.
 17 Q If you're referencing to a
 18 document, it's probably easier for us to mark it?
 19 A You don't have a number?
 20 MR. WOLFSON: I know. We'll put a
 21 sticker on it right now. We'll mark it
 22 as Machuca 2.
 23 Let the record reflect that
 24 Mr. Machuca has produced now for the
 25 first time a series of email

Page 23

1 Machuca
 2 correspondence. They appear to be sorted
 3 into six packets.
 4 I will mark them for identification
 5 purposes as Machuca 2, 3, 4, 5, 6 and 7.
 6 (Emails were marked as Machuca
 7 Exhibit No. 2-7 for identification, as of
 8 this date.)
 9 Q Mr. Machuca, just referring to the
 10 documents that have been marked as Machuca 2
 11 through 7, these are just emails to Ramsey just
 12 about the details of the booking; is that what is
 13 there?
 14 A Yes.
 15 Q Is there anything unusual in this
 16 correspondence that is different than the way
 17 cargo was usually booked with Ramsey?
 18 A No.
 19 Q Is there anything about this that
 20 is different than the way cargo would have been
 21 booked with other suppliers at J.R.J.?
 22 A No.
 23 Q So for the two or three shipments
 24 from Ramsey of Columbia plantains in the prior
 25 month, there were also email correspondence that

Page 24

1 Machuca
 2 was more or less similar to what's been marked as
 3 Machuca 2 through 7?
 4 A Yes.
 5 Q And am I correct that Ramsey booked
 6 the cargo with CSAV?
 7 A Yes.
 8 Q Was there any discussion about who
 9 Ramsey would book the cargo with, I mean, as
 10 between you and Ramsey?
 11 A Who at Ramsey booked the cargo
 12 within Colombia?
 13 Q Yes.
 14 A Patricia Rios.
 15 Q Who is she?
 16 A She worked for CSAV.
 17 Q What I am saying is, you had a
 18 service contract with CSAV?
 19 A Yes.
 20 Q These bills of lading were issued
 21 pursuant to that service contract?
 22 A Yes.
 23 Q Was there any communication from
 24 J.R.J. to Ramsey saying CSAV is the carrier
 25 that -- we booked the cargo with CSAV?

Page 25

1 Machuca
 2 A Yes.
 3 Q Was it you who made that
 4 communication to them?
 5 A Yes.
 6 Q Who did you communicate that to?
 7 A To Louis Caceres.
 8 Q And this Patricia is who?
 9 A CSAV contact down there.
 10 Q Did you give Ramsey Patricia's name
 11 or did Ramsey?
 12 A I gave Ramsey Patricia's name.
 13 Q Did Ramsey take any particular
 14 action when you suggested CSAV, or did they say
 15 anything about that, or was that unusual in any
 16 way?
 17 A No.
 18 Q Correct me if I am wrong, you said
 19 you also had been shipping yams from Colombia?
 20 A Yes.
 21 Q Did you use CSAV to ship those
 22 yams?
 23 A CSAV and APL.
 24 Q Was any insurance procured for this
 25 shipment?

Jimmy Machuca

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1 Machuca
 2 A No.
 3 Q Was that on your instructions or
 4 something that Ramsey decided to do?
 5 MR. McCONNELL: Objection to the
 6 form of the question.
 7 Q Was there any discussion with
 8 Ramsey?
 9 MR. McCONNELL: You're assuming --
 10 MR. WOLFSON: I am withdrawing the
 11 question.
 12 Q Was there any discussion with
 13 Ramsey about purchasing insurance for this
 14 shipment or the other plantain shipments?
 15 A No.
 16 Q Did you have any expectation as to
 17 whether Ramsey would be purchasing insurance for
 18 these shipments?
 19 A No.
 20 Q In your normal practice, if
 21 insurance was going to be purchased, would that be
 22 something that you would suggest or know about?
 23 A Yes.
 24 Q Now, again referring to the bill of
 25 lading, Bates number 51 of Machuca 1, the cargo

Page 28

1 Machuca
 2 A Two weeks.
 3 Q Did you visit the plantain field in
 4 Uraba?
 5 A Yes.
 6 Q So when you went four or five years
 7 ago to Colombia, what brought you there?
 8 Why were you there, business or
 9 pleasure?
 10 A Business.
 11 Q What was the purpose of your
 12 business?
 13 A Yams, plantains.
 14 Q So had you -- so your interest in
 15 Colombian plantains goes back actually four or
 16 five years?
 17 A Yes.
 18 Q And is there a reason why four or
 19 five years ago you didn't begin importing
 20 Colombian plantains?
 21 A Didn't have the client right here,
 22 the New York market. I had no clientele for these
 23 plantains.
 24 We did the shipment because we had
 25 already established a clientele for this product.

Page 27

1 Machuca
 2 was in a sealed container, one container; is that
 3 correct?
 4 A Yes.
 5 Q And it says CY/CY, do you know what
 6 that means?
 7 A Where?
 8 Q Under marks and numbers, it says --
 9 does that mean container yard to container yard?
 10 A Yes.
 11 Q And the bill of lading covered the
 12 ocean transit from Cartagena to the Port of New
 13 York, correct?
 14 A Yes.
 15 Q Do you know where the plantains
 16 originated from?
 17 A U-R-A-B-A (sic) Colombia.
 18 Q Have you ever been to Colombia?
 19 A Colombia?
 20 Q Yes?
 21 A Not lately.
 22 Q When was the last time you were in
 23 Colombia?
 24 A About four, five years ago.
 25 Q How long were you there for?

Page 29

1 Machuca
 2 Q When you were in Colombia for your
 3 yams, why did you look at -- what plantains did
 4 you see?
 5 Did you see where plantains were
 6 grown?
 7 A How plantains were grown?
 8 Q Did you see where the Colombia
 9 plantains were grown?
 10 A Yes.
 11 Q Was that a Ramsey operation or some
 12 other operation?
 13 A Just my curiosity.
 14 Q Do you know whether Ramsey runs the
 15 operation that grows the plantains or whether
 16 Ramsey buys the plantains from somebody else?
 17 A Ramsey buys the plantains from the
 18 growers.
 19 Q Do you know who the growers were
 20 in --
 21 A Some of them.
 22 Q There's multiple growers?
 23 A Yes.
 24 Q Which ones do you know?
 25 A I have a list of names. I don't

Jimmy Machuca

Page 30

1 Machuca
2 have it with me.
3 MR. WOLFSON: I will request a copy
4 of that list of names.
5 Q Is it your understanding that all
6 those growers are in one particular area?
7 A Yes, Uraba.
8 Q When you were in Colombia four or
9 five years ago, did you go to that particular area
10 in Uraba or someplace else?
11 A I went by Uraba.
12 Q Do you now recall if you saw the
13 plantains or the operations of any of the growers
14 which were involved in this shipment?
15 A No.
16 Q When you were in Uraba four or five
17 years ago, did you have a chance to observe the
18 way the plantains were picked and transported, the
19 care that was generally afforded them in Colombia?
20 A We have -- I have a person down in
21 Colombia in which his name is Gustavo,
22 J-A-R-A-M-I-L-L-O, in which he takes care of
23 whatever import-export from Colombia to the USA.
24 He will be looking after the plantains, making
25 sure it's fresh cut.

Page 31

1 Machuca
2 Q Is he an employee of J.R.J. or
3 somebody you just hired?
4 A He worked for C.I. Ramsey,
5 Colombia.
6 Q He works for the shipper, Ramsey?
7 A Yes.
8 Q Have you spoken to Mr. Ramsey about
9 these particular plantains and when they were
10 picked, or how they were stored, how they were
11 treated, Mr. Gustavo? I am sorry. I misspoke
12 when I said Ramsey.
13 A Yes.
14 Q When did you have that
15 conversation?
16 A Right after I received the
17 container.
18 Q Did you call him or did he call
19 you?
20 A I called him.
21 Q What did he say, or what did you
22 say to him?
23 A Told him that the product came in
24 ripe.
25 Q What did he say?

Page 32

1 Machuca
2 A He is surprised.
3 Q Did you ask him about the condition
4 of the -- of these particular plantains in this
5 container?
6 Do you know whether he actually saw
7 them personally?
8 A Yes.
9 Q Did he see them personally?
10 A Yes.
11 Q He told you he saw them personally?
12 A Yes.
13 Q What did he say he saw?
14 A Fresh plantains put in the
15 container.
16 Q Did he tell you when they were
17 picked?
18 A Of course, yes.
19 Q There were several different
20 growers?
21 A Yes.
22 Q Was he present when all of them
23 were picked?
24 A Usually the plantains, once they're
25 picked, they go to a packing house, and then they

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1 Machuca
2 get washed, dipped in a pool, you know.
3 Q I know usually. I am not asking
4 usually. I want to know what you know.
5 Do you know if this Gustavo was
6 present in the packing house, in the fields? If
7 you know. Do you know where he was?
8 A Of course, must be there. He was
9 there.
10 Q Was where?
11 A At the packing house.
12 Q And do you know how he knows --
13 it's a crazy question, but, did he tell you he was
14 at the at packing house when all these plantains
15 arrived?
16 A Yes.
17 Q And did he tell you he knew when
18 they were picked?
19 A Yes.
20 Q Did he tell you when were they
21 picked?
22 MR. McCONNELL: Don't -- you know,
23 I am going to put this on the record.
24 Don't ascribe too much to him if you
25 don't know, you know.

1 Machuca
 2 A Okay. What I could tell you what I
 3 know.
 4 Q I understand that your knowledge is
 5 limited. You're in a different country.
 6 A Right, I don't know.
 7 Q It's not a trick question. It's
 8 okay if you don't know.
 9 I can't imagine this conversation
 10 that Mr. Ramsey (sic) told you everything that he
 11 has ever done.
 12 So I am really just asking, I can
 13 ask you about your personal knowledge and I can
 14 also ask you about what he told you.
 15 So really I am talking about what
 16 he told you and what you know from his telephone
 17 conversation with you.
 18 So let me ask again. Do you -- did
 19 he say that he personally saw these plantains
 20 before they were put in the containers?
 21 A Yes.
 22 Q Do you happen to know where he was
 23 when he saw them?
 24 A No.
 25 Q Did he say when they were picked?

1 Machuca
 2 MR. McCONNELL: Packing house?
 3 Q Did he say when they were picked?
 4 A Yes.
 5 Q When did he say they were picked?
 6 A They were picked early in the
 7 morning, brought to the packing house.
 8 Q What day?
 9 A The same day.
 10 Q Same day that he was there? What
 11 day was that?
 12 MR. McCONNELL: If you know.
 13 A Do not know the exact date.
 14 Q Did he say what he saw?
 15 Did he say what happened at the
 16 packing house?
 17 A Plantains were precooled, put in a
 18 box and got the load together and sent to the
 19 pier.
 20 Q Precooled, put in water?
 21 A In water and refrigerator truck.
 22 Q Did he tell you what kind of truck
 23 it was?
 24 A Tractor-trailer.
 25 Q Did he tell you the truck was

1 Machuca
 2 refrigerated?
 3 A Yes.
 4 Q At that point was it already put in
 5 the oceangoing container?
 6 A At that point?
 7 Q Yes, when it was put on the truck?
 8 A Yes.
 9 Q Did he tell you who the trucker
 10 was?
 11 A No.
 12 Q Do you know where the packing plant
 13 was?
 14 A No.
 15 Q Do you know how far away the
 16 packing plant was from the pier?
 17 A I could give you an --
 18 approximately, an estimate time; five, six hours.
 19 Q That's based on when you visited
 20 four, five years ago?
 21 A Yes.
 22 Q Was it Ramsey who got the trucker?
 23 Who obtained the trucker?
 24 A Ramsey.
 25 Q Do you know the name of the

1 Machuca
 2 trucker?
 3 A Don't know.
 4 Q Just to be clear, do you have any
 5 personal knowledge, any personal knowledge, about
 6 the condition of the plantains, the care that was
 7 afforded the plantains before they were loaded?
 8 A No.
 9 Q Before you started using Ramsey for
 10 Colombian plantains, did you have any discussions
 11 with Ramsey about their operation, about how they
 12 go about preparing the plantains for shipment,
 13 about quality control, anything like that, or was
 14 it something that was expected in the industry?
 15 A Yes, we spoke about quite a bit.
 16 Q When did those discussions take
 17 place?
 18 A Before that shipment.
 19 Q Before the first shipment?
 20 A Yes.
 21 Q If you can recall, just what kind
 22 of questions you asked him, and what kind of
 23 answers he gave.
 24 A What kind of question?
 25 Q What did you ask him?

1 Machuca
2 A How many plantains supposed to be
3 in a box.
4 Q For example, did you discuss how
5 the plantains would be packed?
6 Did you discuss how long you
7 expected the time to be between the time the
8 plantains were picked and the time they were
9 loaded?
10 Did you discuss the ventilation
11 that was requested?
12 Did you discuss the refrigeration?
13 A We discussed that, but they also
14 know that. They know how to pack plantains.
15 Q I am just trying to understand.
16 I understand that's the
17 expectation. I am trying to get a sense of what
18 the specific discussions were beyond what your
19 expectations were as professionals in the trade.
20 A Right.
21 Q Do you recall if you had any
22 specific concerns that you were asking him and got
23 any specific answers?
24 A Yes. I told him to make sure the
25 plantains were cut fresh, washed and they all the

1 Machuca
2 same length. Make sure he puts about 60 plantains
3 in a box, containers precooled, all that.
4 Q Did you discuss the packaging in
5 any detail?
6 A No.
7 Q And the packaging in this case, was
8 it different in any regard than what you normally
9 had?
10 A No.
11 Q As you sit here today, do you know
12 how long it was between the time the plantains
13 were picked and the time they were put in the
14 containers from your personal knowledge?
15 A Same day.
16 Q How do you know?
17 A The way it should be.
18 Q I am asking -- again, not what you
19 expect or your personal knowledge. You weren't
20 there?
21 A No.
22 Q So do you know from your personal
23 knowledge when these plantains were picked?
24 A No, but I would never think if we
25 are trying to do a business, we try to put the

1 Machuca
2 best quality.
3 Q You don't always get the best
4 quality?
5 MR. McCONNELL: I object to that
6 question.
7 Q Plantains, in particular plantains,
8 they have -- they're more difficult than other
9 kind of perishables, are they not? Is that fair
10 to say as far as care and shelf life?
11 A Not really.
12 Q What is the shelf life of a
13 plantain, in your experience? I understand you're
14 not an expert.
15 A After receiving the product?
16 Q No, from the time it's picked.
17 A From the time it's picked?
18 Q Uh-huh.
19 A Thirty days.
20 Q And is that knowledge based on your
21 experience in the trade or do you look at
22 literature?
23 A I don't have literature, but I have
24 done so much business with plantains for more than
25 a month.

1 Machuca
2 Q That's fine. It's not a trick
3 question.
4 A Okay.
5 Q Let's compare that with just a
6 normal banana. What would the shelf life be. You
7 import bananas, too?
8 A Yes.
9 Q What would the shelf life be of a
10 banana from the time of picking?
11 A A month also.
12 Q What about a yam?
13 A A yam?
14 Q Yes.
15 A A yam, eight months.
16 Q And is there a particular
17 temperature, carrying temperature, that is best
18 for plantains, in your experience?
19 A Yes.
20 Q What is that temperature?
21 A 45, 7.2 Celsius.
22 Q That's based on your experience in
23 the trade rather than referring to any book or
24 treatise or --
25 A Based on my experience.

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1 Machuca
2 Q Is there any ventilation -- how
3 should these things be ventilated in an oceangoing
4 container?
5 A 50 percent.
6 Q I encourage you to look at any of
7 the documents you have at any time during this
8 deposition.
9 I am wondering if you can tell me
10 when these plantains were put in the container.
11 A Let's see, we have something saying
12 that here; but from my knowledge, I could tell you
13 that a plantain -- they get picked.
14 Q The date?
15 A The date or the time?
16 Q If you have the file, that's great.
17 A Must be by noon, but the date, I do
18 not know the date. I don't remember. It's been
19 two years.
20 Q I understand you may not remember.
21 There is a lot of documents you produced. These
22 are J.R.J.'s documents and there is a survey
23 report, if that helps you to determine.
24 MR. McCONNELL: You know, one of
25 these emails says that they're going to

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1 Machuca
2 cut it on the Friday, the 7th.
3 Here, this one.
4 MR. WOLFSON: What are you
5 referring to?
6 MR. McCONNELL: He is going to --
7 he doesn't say when.
8 A Yes, 8:00 in the morning.
9 Q That's expressing an intention.
10 What are we referring to?
11 A Exhibit 6.
12 Q Again, that's just -- these are
13 just talking about the bookings, what the intended
14 plans are. Doesn't say what actually happened.
15 A Uh-huh.
16 Q I am looking for the date -- is
17 there any date you can figure -- if there is any
18 document that confirms when these plantains were
19 actually put in the container -- let me back up.
20 MR. McCONNELL: Is there one?
21 MR. WOLFSON: I don't think so.
22 Okay.
23 MR. McCONNELL: I thought you were
24 so sure that --
25 MR. WOLFSON: I think maybe there

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1 Machuca
2 is.
3 Q Mr. Machuca, I am not going to
4 belabor these documents with you. I have the
5 temperature data downloaded from the reefer. Have
6 you seen those kind of downloads before?
7 A Yes.
8 Q I understand this is not your
9 expertise. Would you feel comfortable looking at
10 those temperature records and from that
11 determining --
12 MR. McCONNELL: No, I would not
13 encourage him to do it.
14 MR. WOLFSON: That's what I
15 expected.
16 Q In summary, you're not qualified to
17 look at temperature data, you leave that to the
18 surveyors, right?
19 A Yes.
20 Q So the answer to my question, there
21 is nothing that we have before us that you feel
22 competent to testify about to determine factually
23 what date the plantains were placed in the
24 container, correct?
25 A No.

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1 Machuca
2 Q Do you have any documents in front
3 of you which indicate when the container was
4 loaded aboard the vessel?
5 MR. McCONNELL: I can answer. I
6 don't think we do.
7 THE WITNESS: It says it was
8 shipped Tuesday, the 11th.
9 MR. McCONNELL: We don't know
10 whether it happened or not.
11 Q Typically, in your experience, a
12 cargo would be loaded and the ship would depart
13 within a day or two that the bill of lading was
14 dated?
15 A What was the question again?
16 Q Typically in your experience the
17 container would be loaded on the vessel and the
18 vessel would depart within a day or two of the
19 date the bill of lading was issued.
20 A I don't know that. I know once the
21 cargo was there, probably 12 hours later the ship
22 leaves.
23 Q I am asking you, I understand it
24 may not be an exact date, but as a rough date,
25 bill of lading issue is pretty much a rough date?

12 (Pages 42 to 45)

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1 Machuca
2 A No.
3 MR. McCONNELL: We will stipulate
4 that the bill of lading is dated the 11th
5 and says, "clean, shipped on board."
6 MR. WOLFSON: John, no speaking
7 objections.
8 Q The particulars part of the bill of
9 lading was furnished by Ramsey. It says
10 particulars furnished by shipper, correct?
11 A What was the question again?
12 Q Particulars furnished by shipper
13 means that the particulars were furnished by
14 shipper.
15 Apparently, I have to ask this
16 question because of Mr. McConnell's speaking
17 objections.
18 A It says there.
19 Q It was a sealed container?
20 A Yes.
21 Q It was sealed when you got the
22 container?
23 A Yes.
24 Q It was also sealed when CSAV
25 discharged the container?

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1 Machuca
2 A Right.
3 Q There's no windows in the container
4 they can peak in?
5 A No.
6 Q Refer to Bates stamp 64 of Machuca
7 1. This is a survey report prepared by Argo
8 Narvas Marine?
9 A Yes.
10 Q This is the survey that was gotten
11 by J.R.J.?
12 A Yes.
13 Q Is this kept in the ordinary course
14 of your business?
15 A Excuse me?
16 Q Is it a business record that you
17 keep in the ordinary course of your business?
18 A Yes.
19 Q You don't have a survey on every
20 shipment, just when you think something might be
21 wrong?
22 A Only when I see a problem with the
23 cargo.
24 Q It says way down the page, Bates
25 stamp 64, "Departed Cartagena, Colombia; arrived

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1 Machuca
2 Newark, New Jersey, on July 18, 2006?"
3 A Where are you? The bottom.
4 Q In the middle. I am trying to
5 figure when the shipped arrived.
6 A I am lost. I can't find that.
7 Q Right here (indicating).
8 A Yes.
9 Q Does that accord with your
10 recollection when the vessel discharged, was it
11 July 18, 2006?
12 A Yes.
13 Q How long, generally, is the trip
14 from Cartagena to the Port of New York?
15 MR. McCONNELL: Listen to the
16 question, please.
17 A Eight days, ten days.
18 Q So it's about right, from the
19 11th --
20 MR. McCONNELL: That's an ETA. I
21 mean, it's fair to say you weren't there
22 when the ship arrived, so you don't know
23 if it came the 18th or the 19th?
24 Q Your surveyor said the 18th for
25 whatever reason?

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1 Machuca
2 A Yes.
3 Q Do we have any understanding where
4 he got that information?
5 A No.
6 Q That's information that any
7 surveyor could find out for you quite readily?
8 A Yes.
9 Q It says, "On July 20, J.R.J.'s
10 trucker picked up the container." It's in the
11 following paragraph; is that correct?
12 A Yes. It says it there.
13 Q And CSAV trucks is something that
14 J.R.J. used in the past?
15 A Yes.
16 Q You used them before this shipment?
17 A Yes.
18 Q Was it the regular trucker they
19 used for years?
20 A No, I use different trucking
21 companies.
22 Q Why did you use different trucking
23 companies instead of just one?
24 A Sometimes there is -- they're too
25 busy and you have to get somebody else.

13 (Pages 46 to 49)